

Participant Directed Programs Policy Collaborative
Follow-up notes from the June 26, 2013, meeting

During the June PDPPC meeting there were several questions asked by stakeholders to the Department that required additional follow-up. Below are responses to the questions pertaining the Affordable Care Act (ACA) and Financial Management Services (FMS).

Affordable Care Act

Under the ACA what income is counted and what are the exemptions or disregards to income?

The counting of income is based on federal tax rules for determining adjusted gross income. Modifications include not counting scholarships, fellowship grants, and awards used for education purposes; American Indian and Alaska Native income, and lump sums. There is a general 5% disregard applied to households for purposes of income and eligibility.

Under the ACA are there asset considerations?

There are no asset considerations under ACA.

How many CDASS attendants in Colorado are FTE under ACA guidelines?

As of August 2012, there were approximately 2,045 attendants who worked at least 30 hours per week at some point over a six month period. Of those, 376 worked at least 30 hours in every week over that timeframe. Employers have the option to use a look-back measurement period of up to 12 months to determine whether variable hour employees or seasonal employees are full-time employees.

What is the amount and frequency of the tax credit for employers?

Small employers are eligible for a tax credit equal to a portion of the employer's cost to provide health insurance. For purposes of the tax credit, a small employer is defined as one with fewer than 25 full-time equivalent employees, and annual average wages from the preceding year of less than \$50,000.

Small employers must have contributed at least 50 percent of the cost of the health insurance premiums to qualify for the credit.

The credit amount is generally 35 percent through 2013. It will be 50 percent thereafter.

Pursuant to the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985, certain automatic cuts took place on March 1, 2013. These required cuts include an 8.7 percent reduction to the Small Business Health Care Tax Credit.

How does the tax credit work if someone's income is low enough where they are not currently paying taxes?

The Patient Protection and Affordable Care Act (PPACA) includes provisions to lower premiums and cost-sharing obligations for people with low and modest incomes.

Premium tax credits would be refundable and advanceable. A refundable tax credit is one that is available to a person even if he or she has no tax liability. An advanceable tax credit allows a person to receive assistance at the time they purchase insurance rather than paying their premium out of pocket and waiting to be reimbursed when filing their annual income tax return.

The amount of the tax credit that a person can receive is based on the premium for the second lowest cost silver plan in the exchange and area where the person is eligible to purchase coverage. A silver plan is a plan that provides the essential benefits and has an actuarial value of 70%. (A 70% actuarial value means that on average the plan pays 70% of the cost of covered benefits for a standard population of enrollees.)

Here is a calculator that can give a sense of the amount of individual subsidy available <http://kff.org/interactive/subsidy-calculator/>

What constitutes full-time? 30 hours 40 hours under the ACA?

Under the ACA, an employee who works at least 30 hours per week is considered a full time employee.

What percentage of the health insurance premiums can employers pass on to the employees?

There is no percentage of the health insurance premium that an employer is required to cover under ACA. The employer is deemed to be offering affordable coverage if

the employee's share of premium does not exceed 9.5% of income and the employer has a plan that has an actuarial value of at least 60%.

What happens if businesses don't provide insurance by the time the employer penalty gets implemented in 2015?

If the business with more than 50 FTE equivalents does not offer affordable health insurance in 2015 (defined above) they are required to pay a \$2,000 penalty if an employee accesses coverage and receives a subsidy through the marketplace; however, the penalty does not apply to the first 30 employees.

If Public Partnerships Colorado (PPC) provides health insurance for its nonexempt staff, can't they just provide the same coverage to CDASS attendants?

The Department of Health Care Policy and Financing does not have the authority to require any business or agency to offer health insurance. If the business does not offer health insurance it will be subject to a penalty if an employee participates in the Marketplace.

Isn't health insurance the cost of doing business now? PPC knew that this was coming when they negotiated their contract with the state so why should this come out of the allocations?

The Affordable Care Act does not mandate businesses to provide health insurance. The ACA requires businesses to pay a penalty if an employee participates in the Marketplace. The mandate for individuals to have health insurance is effective January 1, 2014. The penalty phase for businesses not offering health insurance has been delayed until 2015.

Financial Management Services (FMS)

What are the costs for each element of the contract with PPC? For example how much do they spend for payroll per person, how much does it cost them to process a new employee, how much does it cost to do a training, etc?

The contract for Financial Management Services was awarded to the vendor through a competitive process in accordance with State Procurement rules.

The Department established the \$310 per member per month (PMPM) as a per capita equivalent to the previous 10.75% CDASS allocation withholding in order to maintain the original contract value. Without this a new competitive procurement would likely have been required. There is not a specific cost per task, but the contract lists the scope of work the contractor is required to perform for payment. The scope of work includes:

- Monthly expenditure reports for clients and case managers
- Training for clients and authorized representatives
- Review of the Attendant Support Management Plan (ASMP)
- Processing payroll
- Notifying clients of delayed timesheets
- Other monthly reports on billing, expenditures, overspending
- Quarterly reports on demographics, spending, training, enrollment

What would be different if Colorado changes the FMS model from Agency with Choice to Fiscal Employer Agent?

Please see below for a breakout of the basic differences between the two FMS models. This information is from the CMS Information, Technical Guide and Review Criteria Version 3.5 (p. 201-202). CMS does allow a state to contract with the FMS to provide additional functions including executing provider agreements and training clients who select consumer direction.

FMS Responsibility	Fiscal Employer Agent	Employer with Choice
Act as a neutral bank, receiving and disbursing public funds, tracking and reporting on the participant's budget funds(received, disbursed, and any balances)	X	
Process and pay invoices for goods and services in the participant's approved service plan	X	
Prepare and distribute reports (e.g., budget status and expenditure reports) to participants and other entities specified in the waiver	X	X
Assist the participant in verifying workers citizenship or legal alien status (e.g., completing and maintaining a copy of the 1-9)	X	X
Collect and process attendants' timesheets	X	X

Operate a payroll service, (including withholding taxes from workers' pay, filing and paying federal, state, and local taxes) and distribute payroll checks on the participant's behalf	X	X
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Would the PMPM be lower if the FMS model is changed?

At this time the Department is not considering revising the PMPM rate for the FMS.

What other changes would there be in the roles?

The primary change in roles would be to recognize the clients or authorized representatives, as the common law employer rather than co-employer. This change would result in the client having the authority and control to hire and fire attendants without PPL input.

Will PPC no longer do background checks and deny hiring people with barrier crimes if the FMS model is changed?

The Department is still exploring the requirements around this issue to ensure compliance with CMS waiver assurances for the health and safety of waiver participants and provider qualifications. Further guidance is forthcoming.

According to the W4, I9, and paycheck PPC is the employer. How is it that they are not considered the employer when it comes to offering health insurance?

The current FMS model in Colorado is Employer with Choice which means that PPL and the client are co-employers.

Can the Department clarify phrase in the contract that states if there is a requirement for insurance then HCPF would "work with" PPC? Did that mean if HCPF or the Colorado General Assembly required insurance then HCPF would engage PPC on the costs or that HCPF would accept responsibility for changes based on federal law.

The exact phrasing in the contract is as follows:

Services to be performed by PPL, Colorado are:

“...Provide health insurance benefits to attendants (when provided for by amendment to this Contract)”

This language was added at the request of stakeholders. The Department has not initiated a contract amendment to expand PPL Colorado’s performance obligations.

Who would be responsible for payroll taxes (payment and filing) if the FMS model changes?

PPL would continue in its responsibility to ensure all local, state, and federal employment taxes are paid. PPL would also ensure unemployment insurance and workers’ compensation insurance is paid.

If attendants are classified as independent contractors would they each be required to have independent liability, workers compensation and unemployment insurance?

Attendants are not likely to meet the criteria set forth by the Internal Revenue Service to be considered an independent contractor. For more information about the distinction between employees and independent contractors please visit [http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Independent-Contractor-\(Self-Employed\)-or-Employee%3F](http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Independent-Contractor-(Self-Employed)-or-Employee%3F).